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EINV, USTR, OPIC, USAID

SUBJECT: MOZAMBIQUE 2006 INVESTMENT CLIMATE STATEMENT

REF: 05 STATE 202943

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#### 2006 Investment Climate Statement - Mozambique

##### Openness to Foreign Investment

Mozambique encourages foreign direct investment. CPI, the government's Investment Promotion Center, seeks to bring investors to Mozambique and should be a potential investor's primary contact with the government. CPI is particularly interested in increasing investment in the central and northern regions of the country in order to address large regional development imbalances.

Contact information for the Investment Promotion Center (CPI) is as follows:

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Mozambique's Law on Investment, No. 3/93, dated June 24, 1993, governs foreign investment. Additional amendments were passed over the next two years: Decree No. 14/93 on July 21, 1993 and decree No. 36/95 on August 8, 1995. The law and amendments generally do not make distinctions based upon investor origin, nor do they limit foreign ownership or control of companies. The lengthy registration procedures can be problematic for any investor - national or foreign. Working with a local consulting firm or partner familiar with the requirements will facilitate the registration process. CPI assists foreign investors in obtaining licenses and permits. However, in general, large investors receive much more support from the government in the business registration process than small and medium-sized investors, who often must endure lengthy, overly bureaucratic delays.

The "Doing Business in 2006" (which covers 2005) report by the World Bank identifies Mozambique as one of the most difficult countries to start a business. Entrepreneurs can expect numerous bureaucratic hurdles that must be overcome sequentially to launch a business. In 2005 the average time to open a business was 139 days, although some within the business community feel that the process in reality might be moving slightly faster. The government, working with donors, hopes to shorten this period considerably in coming years.

To date Mozambique's privatization program has been relatively transparent, with open and competitive tendering procedures in which both foreign and domestic investors have participated. Most remaining parastatals are in public utilities, making their privatization more politically sensitive. While the government has indicated an intention to take on partners in most of these utility industries, progress on privatization has been slow.

Government authorities must approve all foreign and domestic investment. Currently CPI handles the approval process for foreign investors. The investment approval process is automatic within 10 days if no objections are voiced by any of the following: 1) the relevant ministries; 2) the provincial governor for investments under USD 100,000 or 3) the Minister of Planning and Finance for investments between USD 100,000 and USD 100 million. The Council of Ministers must review investments over USD 100 million and those involving large tracts of land (5,000 hectares for agricultural investments, 10,000 hectares for livestock or forestry projects). The Council has 17 working days to voice an objection before approval becomes automatic. The government has not yet used these screening mechanisms to limit investment or to protect a domestic industry.

#### Conversion and Transfer Policies

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Foreign exchange retention accounts are permitted for 100 percent of foreign exchange earnings without formal justification. These may be used to purchase imports. Investment registration and repatriation procedures must be followed to repay foreign loans and for the repatriation of invested capital, profits and dividends. Delays are uncommon beyond those typical for administrative processing in a developing country.

#### Expropriation and Compensation

Private property was nationalized throughout Mozambique in 1975 following independence from Portuguese colonial rule. After Mozambique's turn away from socialism in the 1980s, citizens had a period of time to reclaim residential property. The government retained commercial property, but later sold it off as part of its privatization efforts. All but a handful of religious properties that were nationalized have been returned; negotiations are ongoing for the remaining few. It is worth noting, however, that there is no private ownership of land in Mozambique; all land is owned by the state.

While there have been no significant cases of nationalization since the adoption of the 1990 Constitution, Mozambican law holds that "(w)hen deemed absolutely necessary for weighty reasons of national interest or public health and order, the nationalization or expropriation of goods and rights shall (result in the owner being) entitled to just and equitable compensation."

#### Dispute Settlement

In December 2005 the National Assembly approved major revisions to the commercial code - the result of a

collaborative effort starting in 1998 between the Mozambican government, the private sector and donors. The previous commercial code was from the colonial period, with clauses dating back to the 19th century, and did not provide an effective basis for modern commerce or resolution of commercial disputes. The revised code is generally viewed as a very positive development.

To date the judicial system has been largely ineffective in resolving commercial disputes. Instead most disputes among Mozambican parties are either settled privately or not at all. The business community is still so small that a commercial dispute or accusation of illegal activity can seriously damage one's reputation.

In February 1999 the National Assembly passed alternative dispute resolution (ADR) legislation. The Center for Commercial Arbitration, Conciliation and Mediation (CACM), which is supported by USAID, offers commercial arbitration. CACM has two locations - one in Maputo and a second in the northern city of Nampula. CACM does not, however, deal directly with labor issues. For disputes between international and domestic companies, the law closely follows UNCITRAL, the United Nations Commission of International Trade Law. For domestic arbitration, the law is formulated to cover a wide range of potential disputes, including non-commercial issues. Mozambique acceded in mid-1998 to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. For disputes between American and Mozambican companies where a violation of the nations, Bilateral Investment Treaty (BIT) is alleged, recourse via international ADR under the BIT may also be available.

#### Performance Requirements and Incentives

Mozambique is generally in compliance with WTO Trade-Related Investment Measures (TRIM) obligations. A variety of tax incentives exist to encourage direct foreign investment, which vary according to the region of the country and the nature of the investment but often include a 50 to 80 percent

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reduction in taxes. Customs exemptions are possible for the importation of capital equipment and raw materials. To qualify, a minimum investment of USD 50,000 and pre-approval from CPI are required. The government grants special fiscal, labor and immigration arrangements to companies operating in designated Rapid Development Zones. Rapid Development Zones include the whole of Niassa Province, Nacala District, Ilha de Mocambique, Ibo Island and the Zambezi river valley. Investments in these zones are exempt from import duties on certain goods, from real property transfer tax and are granted an investment tax credit equal to 20% of the total investment (with a right to carry forward for five years).

Specific performance requirements are built into mining concessions and management contracts, and sometimes into the sale contracts of privatized entities. Investments involving partnerships with the government usually include milestones that must be met for the investor's project to continue.

Note: The process of obtaining a visa and related work permits in Mozambique is lengthy and overly bureaucratic. The Ministry of Labor must approve the employment of foreigners. The Ministry of Interior's immigration department issues a DIRE (a work permit/identification card) once the Ministry approves the application. Assistance through a local lawyer, consulting firm or an individual familiar with the process will facilitate obtaining necessary work permits.

#### Right to Private Ownership and Establishment

The legal system recognizes and protects property rights to

building and movable property. Private ownership of land, however, is not allowed in Mozambique. Instead the government grants land-use concessions for periods of up to 50 years, with options to renew. The government at times has granted overlapping land concessions. Essentially, land-use concessions serve as proxies for land titles; however, they are not allowed to be used as collateral. Land surveys are being carried out throughout the country to enable individuals to register their land concessions. This process is moving slowly and will not provide any real legal protection to investors for some time to come. The Mozambican banking community uses property other than land, such as cars and private houses, as collateral.

#### Protection of Property Rights

The inefficient nature of the Mozambican judicial system makes protection of property rights extremely problematic. Pirated copies of audio, videotapes, DVDs and other goods are sold in Mozambique. Intellectual property right infringement is not a significant problem for US companies, however, due to the small size of the local market.

The National Assembly passed a copyright and related rights bill in 2000. This bill, combined with the 1999 Industrial Property Act, brought Mozambique into compliance with the WTO agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS). The law guarantees the security and legal protection of industrial property rights, copyrights and other related rights.

Recently private sector organizations have been working together with various government entities on an IPR task-force team in an effort to combat intellectual property right infringement and related public safety issues.

#### Transparency of Regulatory System

Investors face a myriad of requirements for permits, approvals and clearances, all of which take a significant amount of time and effort to obtain. The difficulty of navigating the system creates space for corruption, and bribes are often requested or offered to facilitate transactions.

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Regulations in the areas of labor, health and safety and the environment are routinely not enforced, or are enforced randomly to generate revenue from fines. In addition, civil servants have at times threatened to enforce antiquated regulations that remain on the books to obtain favors or bribes.

The government is aware of the problems and has launched a donor-funded effort to streamline procedures. In December 2005 the National Assembly finally approved a revised commercial code. The new commercial code is seen as a step forward in combating many of these issues.

#### Efficient Capital Markets and Portfolio Investment

Mozambique has a small capital market of eleven commercial banks, of which four dominate the market. The banks compete for important clients and deposits. Access to credit for the private sector remains difficult and expensive - interest rates for loans generally fall between 17 and 22 percent per year. Access to capital in the rural areas is constrained by the fact that land leases cannot serve as collateral. Various entities, such as the Aga Khan Foundation and NovoBanco, offer micro-credit financing programs to partially fill this need. The tiny stock exchange, founded in October 1999, lists one company (a brewery, Cervejas de Mocambique)

and five government bonds.

#### Political Violence

There were few incidents of localized violence prior to the 2004 general elections. In May 2004 many opposition parties and the ruling FRELIMO party subscribed to an electoral code of conduct, which was generally upheld during the campaign and the elections. However supporters of the opposition party RENAMO complained of intimidation and arbitrary arrests during the December 1-2 voting.

Political violence erupted in September 2005 in Mocimboa da Praia, a small coastal town in the far north, over the special election there to replace the former mayor, who died in office. At least 8 persons were killed and nearly 50 injured in clashes between FRELIMO and RENAMO supporters. However the flare-up apparently was an isolated event; it did not provoke demonstrations or violence elsewhere.

Labor unions are becoming less vocal, and still do not have the financial and institutional capacity to be very effective. Protests rarely turn violent. As in many capital cities, crime is problematic in Maputo, where carjackings, muggings and breaking/entry into homes are commonplace. While such acts have been on the rise over the past few years, they have not reached the same proportions as in neighboring South Africa.

#### Corruption

Corruption is a serious problem in Mozambique. Bribe-seeking activity by officials is common. Senior officials often have conflicts of interest between their public roles and their private business interests. Bribery is considered a criminal offense in Mozambique, and political declarations have been repeatedly issued denouncing corrupt practices and promising actions against the guilty. Despite this, such actions have been extremely slow in coming. Investigations rarely result in convictions, unless the accused has relatively minor influence, and senior officials are seldom, if ever, investigated. The media is relatively unafraid to report on corruption allegations, however.

Over the past three years the United States has been one of the lead donor countries in providing assistance to the government to fight corruption. With US resources, the government set up an Anti-Corruption Unit in the Office of the Attorney General (renamed in 2005 the Central Office for

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the Combat of Corruption). This body is charged with investigating and prosecuting corruption-related crimes. As one result of its reorganization in 2005, the office is expanding in size by hiring more lawyers.

The National Assembly passed an anti-corruption bill in 2004 that updated previous antiquated legislation. Civil society has become more vocal on corruption-related issues, with some support from the US government. One US-supported NGO, Etica Mocambique, is active in pressuring the government to act against corrupt practices. Etica runs a civic education campaign to help citizens identify and protect themselves against corrupt officials or activities. Among other achievements, Etica established several corruption reporting centers that give citizens free legal advice, and offer a mechanism for discreetly reporting corruption-related crimes to the Attorney General's office.

Mozambique is a signatory to the United Nations Convention Against Corruption.

In December 1998 Mozambique negotiated a Bilateral Investment Treaty (BIT) with the US. The US. Senate ratified the treaty in November 2000, followed by the Mozambican Council of Ministers in December 2004. The US-Mozambique BIT came into effect on March 3, 2005. In June 2005 the US and Mozambique signed a Trade and Investment Framework Agreement (TIFA) that established a Trade and Investment Council to discuss bilateral and multilateral trade and investment issues.

Mozambique has also signed bilateral investment agreements with South Africa, Portugal, Zimbabwe, Mauritius, France, Italy, China, Egypt, Indonesia, Algeria, Switzerland, Germany, the Netherlands, Sweden, Denmark, the UK and Cuba.

South Africa is Mozambique's biggest trading partner and the largest source of foreign investment. Since 1995 Mozambique has engaged in regular discussions with South Africa to harmonize trade regulations and facilitate cross-border trade and investment. Other countries with significant investment in Mozambique include the United Kingdom, India and Portugal.

The United States is a minor trading partner and has modest investments.

#### OPIC and Other Investment Insurance Programs

The Overseas Private Investment Corporation (OPIC) has provided financing to two ongoing projects in Mozambique - private investment in and management of transportation services along the Nacala corridor (port and railway) and tourism development on the coast.

Mozambique is a member of the Multilateral Investment Guarantee Agency (MIGA), part of the World Bank Group.

#### Labor

The estimated work force is approximately nine million, out of a total population of 19 million. However only approximately 500,000 are formally employed. In 2005 the government increased the country's minimum wage by 15%, making the new minimum wage for industry and services approximately USD 53 a month and the minimum wage for agricultural workers approximately USD 38 a month. This minimum wage applies only to those working in the formal sector; those working in the informal sector earn significantly less. Many people work several jobs to make ends meet, and often grow corn and vegetables on a small plot of land for personal consumption. An estimated 81 of the labor force works in agriculture, 6 in industry and 13 in services.

Nationwide literacy levels are estimated at 45 (2005 World Bank figure), with urban centers accounting for the majority

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of literate adults.

Labor unions created during the socialist years of the 1970s and 1980s remain weak and are disengaging themselves from the ruling party, FRELIMO. Total membership among Mozambique's fourteen unions is close to 200,000 persons. Labor unions are exerting pressure on the government to maintain extremely pro-worker provisions in new labor legislation currently under negotiation, although they are showing flexibility on major issues. The minimum wage, decided every year, remains a major concern for the unions. Potential investors should be aware that severance payments and other benefits could be costly. A new labor law is expected to pass in 2006. It is likely to significantly reduce the cost of hiring and firing workers and to generally make the formal labor market more flexible. It is essential to obtain reliable legal counsel on labor code requirements.

## Foreign-Trade Zones/Free Ports

The government issued Decree No. 61/99 on September 21, 1999, establishing industrial free zones (export processing zones).

The decree set up an Industrial Free Zone Council, which approves companies as industrial free zone enterprises, thereby providing them customs and tax exemptions and benefits. There are two essential requirements for Industrial Free Zone status: job creation for Mozambican nationals and the exportation of at least 85% of annual production. Industrial Free Zone developers enjoy an exemption from customs duties, VAT and tax on the importation of construction materials, machinery, equipment, accessories, accompanying spare parts and other goods destined for the establishment and operation of the Industrial Free Zone. The processing of cashew nuts, fish and prawns are not acceptable industrial free zone activities. Free zone concessions are granted for a renewable period of 50 years. Mozambique's large export-oriented investment projects of recent years, such as MOZAL and SASOL, operate as industrial free zones.

## Foreign Direct Investment Statistics

**Historical Data:** The government established the Investment Promotion Center (CPI) in 1985. From January 1, 1990 through December 31, 2005 CPI approved a total of approximately 2100 projects involving over USD 3.6 billion in foreign direct investment. Some of these approved projects turned out to be smaller than planned or not implemented at all, for this reason, approved projects do not represent the actual FDI for any given year.

South Africa, Portugal, the United Kingdom, Japan and Ireland have been the top investors in Mozambique. In 2005, however, the top five investors were South Africa, the United Kingdom, Zimbabwe, Portugal and Sweden.

The following chart displays foreign direct investment approved by the CPI in Mozambique over the last 15 years. Most of the investment has been in the south, in and around the capital city, Maputo.

Year	Number of Projects	FDI \$ mil
1990	31	20
1991	25	21
1992	27	77
1993	29	46
1994	123	136
1995	166	60
1996	270	97
1997	184	558
1998	209	207
1999	235	101
2000	179	230
2001	129	528
2002	128	559
2003	112	122
2004	105	122
2005	139	165

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### 2005 Foreign Direct Investment:

In 2005 CPI approved a total of 139 projects with a FDI value of USD 165 million. It is estimated that these approved projects will create over 15,000 jobs. Of this amount, US. FDI amounted to USD 1.6 million (for two projects). The breakdown by sector was as follows:

Sector	Number of Projects	FDI \$ Mill.
Industry	36	16.5
Mining/Energy	2	3.8
Agriculture &		

Agro-Industry	25	41.4
Banking/		
Insurance	1	1.9
Tourism/Hotels	38	84
Transport/Comm.	7	4.9
Construction	7	4
Aquaculture/		
Fishing	3	0.6
Other	20	7.5
Total	139	164.5

The following chart shows 2005 CPI-approved foreign direct investment by province, as well as the estimated number of jobs that will be created by the approved projects (if implemented).

Province (est.)	Number of Projects	FDI \$ Mill.	Jobs
Maputo	50	78.6	7,465
Gaza	9	42.2	1,119
Nampula	15	0.4	1,080
Sofala	14	13.2	1,813
Zambezia	6	2.3	521
Inhambane	20	10.8	984
Cabo Delgado	5	4.0	230
Manica	10	5.6	1,110
Tete	6	2.5	220
Niassa	4	5.0	503
Total	139	164.5	15,045

#### US. Foreign Direct Investment In Mozambique:

Several US. companies have investments in Mozambique. In 1996 Seaboard Corporation (Kansas) purchased a state-owned flourmill in Beira through the country's privatization of the state firm, Mobeira. The South African Bottling Company (SABCO), which is partly owned by Coca-Cola, owns Coca-Cola bottling plants in Maputo, Chimoio, and Nampula that provide national coverage. Another significant US investor is Colgate-Palmolive. In addition, in early 2005, US firms Railroad Development Corporation (RDC) and Edlow Resources (ERL), majority shareholders in the Nacala Corridor Concession Group, assumed ownership and management of the Nacala port and railway network. Other US investments are represented in the following ventures: Tenga Ltd., a macadamia nut plantation in Niassa province, and Indian Ocean Aquaculture (IOA), a shrimp aquaculture project in Cabo Delgado. The US Embassy in Maputo, Mozambique is able to provide a list of US investments in Mozambique upon request.  
La Lime